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The Continental Insurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE CONTINENTAL INSURANCE
COMPANY,

Plaintiff,

vs.

JOHN JOSEPH COTA; REGAL STONE
LIMITED; FLEET MANAGEMENT LTD.,;
and the M/V COSCO BUSAN, LR/IMO Ship
No. 9231743 her engines, apparel, electronics,
tackle, boats, appurtenances, etc., *in rem*,

Defendants.

REGAL STONE LIMITED and FLEET
MANAGEMENT, LTD.,

Counterclaimants,

vs.

THE CONTINENTAL INSURANCE
COMPANY,

Counterdefendant.

Case No.: C-08-2052-SC

Related to Case No:

07-cv-05926-SC

07-cv-06045-SC

07-cv-05800-SC

08-cv-02268-SC

**CONTINENTAL INSURANCE
COMPANY'S ANSWER TO REGAL
STONE AND FLEET MANAGEMENT'S
COUNTERCLAIM**

1 REGAL STONE LIMITED and FLEET
2 MANAGEMENT, LTD.,

3 Cross-Complainants,

4 vs.

5 JOHN JOSEPH COTA,

6 Cross-Defendant.

7 REGAL STONE LIMITED and FLEET
8 MANAGEMENT, LTD.,

9 Third-Party Plaintiffs,

10 vs.

11 THE SAN FRANCISCO BAR PILOTS and
12 THE SAN FRANCISCO BAR PILOTS
13 BENEVOLENT AND PROTECTIVE
14 ASSOCIATION,

15 Third-Party Defendants.

16 Plaintiff and counterdefendant, The Continental Insurance Company ("Continental"),
17 answers defendants and counterclaimants Regal Stone Limited and Fleet Management's
18 (collectively, "Vessel Interests") counterclaim as follows.

19 **ANSWER TO VESSEL INTERESTS' COUNTERCLAIM:**

- 20 1. Continental admits the allegations of paragraph 1.
- 21 2. Continental admits the allegations of paragraph 2.
- 22 3. Continental admits the allegations of paragraph 3.
- 23 4. On information and belief, Continental admits the allegations of paragraph 4.
- 24 5. On information and belief, Continental admits the allegations of paragraph 5.
- 25 6. On information and belief, and construing "technical manager" to mean
26 "operator," Continental admits the allegations of paragraph 6.
- 27 7. Continental admits the allegations of paragraph 7.
- 28 8. On information and belief, Continental admits the allegations of paragraph 8.
9. Continental admits the San Francisco Bar Pilots Association ("the SF Bar
Pilots"), is an association of persons who guide vessels entering or exiting the waters of San

1 Francisco Bay. Continental admits it issued a policy of insurance, No. H856049 ("the Policy"),
2 to the SF Bar Pilots. Otherwise, Continental denies the allegations of paragraph 9.

3 10. Continental admits it issued the Policy to the SF Bar Pilots, the San Francisco
4 Bar Pilots Benevolent Association, and their officers, employees, and individual member pilots.
5 Otherwise, Continental denies the allegations of paragraph 10.

6 11. On information and belief, Continental admits the allegations of paragraph 11.

7 12. Paragraph 12 contains no allegations against Continental, but if an answer to the
8 allegations is required, then Continental admits that California Harbors & Navigation Code §
9 1125(a) states that: "Pilots licensed by the board have exclusive authority, to the extent not
10 provided otherwise by federal law, to pilot vessels from the high seas to Monterey Bay and the
11 Bays of San Francisco, San Pablo, and Suisun and the ports thereof, and from those bays and
12 ports to the high seas. They shall also have exclusive authority to pilot vessels within and along
13 the waters of those bays, except as otherwise set forth in this division." Continental otherwise
14 denies the allegations.

15 13. Paragraph 13 contains no allegations against Continental, but if an answer to the
16 allegations is required, then Continental admits that on November 7, 2007, the vessel allided
17 with the western span of the Bay Bridge resulting in a fuel oil spill into the San Francisco Bay.
18 Continental further admits that at the time of the spill, Cota was aboard the vessel. Continental
19 otherwise denies the allegations.

20 14. Paragraph 14 contains no allegations against Continental, but if an answer to the
21 allegations is required, then Continental admits that Regal Stone has been designated as the
22 Responsible Party for the oil spill clean-up and response. Otherwise, Continental lacks
23 information sufficient to form a belief as to the truth of the allegations of paragraph 14 and
24 denies the allegations.

25 15. Continental admits the allegations of paragraph 15.

26 16. Continental admits the allegations of paragraph 16.

27 17. Continental admits that after several months, during which time Continental
28 incurred over \$300,000 to defend Cota, Regal Stone finally assumed the defense under

1 California Harbors & Navigation Code §1198(c). Continental admits that Regal Stone has at
2 all times refused to pay for counsel to defend Cota with respect to the Criminal Complaint.
3 Otherwise, Continental denies the allegations.

4 18. Paragraph 18 contains no allegations against Continental, but if an answer to the
5 allegations is required, then Continental admits that California Harbors and Navigation Code §
6 1198(c)(1)(B) states, in full: "A vessel subject to this paragraph and its owner, operator, and
7 demise or bareboat charterer shall defend, indemnify, and hold harmless the pilot, any
8 organization of pilots to which the pilot belongs, and their officers and employees, with respect
9 to liability arising from any claim, suit, or action, by whomsoever asserted, resulting in whole,
10 or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which
11 the pilot belongs, and their officers and employees. The obligation to indemnify under this
12 paragraph shall not apply to the extent that it causes the amount recoverable from a vessel, its
13 owner, operator, or demise or bareboat charterer to exceed the limits of liability to which it is
14 entitled under any bill of lading, charter party, contract of affreightment, or provision of law."
15 Otherwise, Continental denies the allegations of paragraph 18.

16 19. Paragraph 19 contains no allegations against Continental, but if an answer to the
17 allegations is required, Continental lacks information sufficient to form a belief as to the truth of
18 the allegations of paragraph 19 and denies the allegations.

19 20. Paragraph 20 contains no allegations against Continental, but if an answer to the
20 allegations is required, Continental lacks information sufficient to form a belief as to the truth of
21 the allegations of paragraph 20 and denies the allegations.

22 21. Continental admits that it issued a policy of insurance, No. H856049, to the SF
23 Bar Pilots, the San Francisco Bar Pilots Benevolent Association, and their officers, employees,
24 and individual member pilots, including Cota. Continental admits that the period of the Policy
25 was January 1, 2007 to January 1, 2008. Continental admits that the Policy is comprised of
26 several coverage sections, among other things. Continental admits that the Policy states: "It is
27 also understood and agreed that liability for all loss, damage, cost, or expense, including all
28 costs of investigation, defense, negotiations or settlement shall be included in the policy limit

1 and shall not exceed \$997,500 excess of \$2,500 in respect of any one accident or occurrence.”

2 Otherwise, Continental denies the allegations of paragraph 21 as being incomplete.

3 22. Continental admits that on June 18, 2008, it filed its First Amended Complaint
4 against Regal Stone, Fleet, Cota, and the vessel. The pleading speaks for itself. Otherwise,
5 Continental denies the allegations of paragraph 22.

6 23. Paragraph 23 contains no allegations against Continental, but if an answer to the
7 allegations is required, then Continental denies the allegations.

8 24. Continental denies the allegations of paragraph 24.

9 25. In response to paragraph 25, Continental incorporates by reference and realleges
10 its answers to paragraphs 1-24.

11 26. Paragraph 26 contains no allegations against Continental, but if an answer to the
12 allegations is required, then, on information and belief, Continental admits the allegations of
13 paragraph 26.

14 27. Paragraph 27 contains no allegations against Continental, but if an answer to the
15 allegations is required, then Continental denies the allegations.

16 28. Paragraph 28 contains no allegations against Continental, but if an answer to the
17 allegations is required, then Continental denies the allegations.

18 29. Paragraph 29 contains no allegations against Continental, but if an answer to the
19 allegations is required, then Continental denies the allegations.

20 30. In response to paragraph 30, Continental incorporates by reference and realleges
21 its answers to paragraphs 1-29.

22 31. Paragraph 31 contains no allegations against Continental, but if an answer to the
23 allegations is required, then Continental admits that Vessel Interests have accurately quoted a
24 portion of California Harbors & Navigation Code § 1198(c)(1)(B) and have added their own
25 emphasis. Otherwise, Continental denies the allegations of paragraph 31 as being incomplete.

26 32. Paragraph 32 contains no allegations against Continental, but if an answer to the
27 allegations is required, then Continental admits that Vessel Interests have accurately quoted a
28

1 portion of California Harbors & Navigation Code § 1198(c)(1)(C). Otherwise, Continental
2 denies the allegations of paragraph 32 as being incomplete.

3 33. Paragraph 33 contains no allegations against Continental, but if an answer to the
4 allegations is required, then Continental denies the allegations.

5 34. Paragraph 34 contains no allegations against Continental, but if an answer to the
6 allegations is required, then Continental agrees with cross-complainants' position; but if the
7 Court rejects that position and finds that the statute does impose the alleged duties upon Vessel
8 Interests, then the Vessel Interests' duties are primary and Continental's duties, if any, are
9 secondary and Continental is entitled to indemnity, subrogation, and/or contribution from Vessel
10 Interests.

11 35. In response to paragraph 35, Continental incorporates by reference and realleges
12 its answers to paragraphs 1-34.

13 36. Paragraph 36 contains no allegations against Continental, but if an answer to the
14 allegations is required, then Continental admits that Vessel Interests have accurately quoted a
15 portion of California Harbors & Navigation Code § 1198(a). Otherwise, Continental denies the
16 allegations of paragraph 36 as being incomplete.

17 37. Paragraph 37 contains no allegations against Continental, but if an answer to the
18 allegations is required, Continental lacks information sufficient to form a belief as to the truth of
19 the allegations of paragraph 37 and denies the allegations.

20 38. Paragraph 38 contains no allegations against Continental, but if an answer to the
21 allegations is required, Continental lacks information sufficient to form a belief as to the truth of
22 the allegations of paragraph 38 and denies the allegations.

23 39. In response to paragraph 39, Continental incorporates by reference and realleges
24 its answers to paragraphs 1-38.

25 40. Continental admits that it is subrogated to Cota's indemnity rights against any
26 other parties. Otherwise, Continental denies the allegations of paragraph 40.

27 41. Continental lacks information sufficient to form a belief as to the truth of the
28 allegations of Paragraph 41 and denies the allegations.

42. Continental denies the allegations of paragraph 42.

AFFIRMATIVE DEFENSES

1. The counterclaim fails to state facts sufficient to constitute a cause of action.

2. The counterclaim is barred by the doctrine of unclean hands.

3. The counterclaim is barred by the doctrine of laches.

4. The counterclaim is barred by the doctrine of estoppel.

5. The counterclaim is barred because California Harbors & Navigation Code § 1198(c)(1)(A) bars the Vessel Interests from asserting any "claim, demand, suit, or action against the pilot, any organization of pilots to which the pilot belongs...."

PRAYER

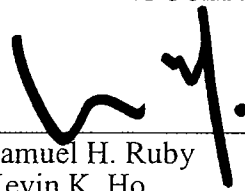
Wherefore, Continental prays for relief as follows:

1. For judgment in favor of Continental and against Regal Stone Limited and Fleet Management Limited on each and every cause of action;
2. That Regal Stone Limited and Fleet Management Limited take nothing;
3. That Continental be awarded its costs of suit;
4. For such further and other relief as the Court may deem just and proper.

DATED: August 4, 2008

BULLIVANT HOUSER BAILEY PC

By



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The Continental Insurance Company

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